

SERVED: February 1, 2001

NTSB Order No. EA-4881

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 31st day of January, 2001

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-16160
v.)	
)	
FLOYD MAUCH,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed from the written decision Administrative Law Judge Patrick G. Geraghty served in this proceeding on January 9, 2001.¹ By that decision the law judge granted a motion by the Administrator for summary judgment on an amended emergency order revoking the respondent's private pilot certificate on an allegation that he had operated an aircraft while his airman certificate was suspended, in violation of

¹A copy of the law judge's "Decisional Order" is attached. Except as discussed in this opinion, we adopt as our own its findings and conclusions.

section 61.3(a) of the Federal Aviation Regulations ("FAR"), 14 C.F.R. Part 61.² For the reasons discussed below, we will deny the appeal.³

The respondent does not deny that he operated an aircraft when there was an outstanding order of the Administrator suspending his pilot certificate for 240 days. His position, rather, is that a revocation cannot be predicated on such an operation because the suspension order was not valid. We agree with the law judge, albeit for somewhat different reasons, that the respondent's failure to file a timely challenge to the suspension order when it was issued in 1997 precludes his effort to do so now.⁴ Respondent's appeal brief provides no legal basis

²FAR section 61.3(a) provides, in pertinent part, as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) *Pilot certificate.* A person may not act as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of U.S. registry, unless that person has a valid pilot certificate or special purpose pilot authorization issued under this part in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization....

³The Administrator has filed a reply opposing the appeal.

⁴While the Board can, for good cause shown, accept a notice of appeal out of time, the good cause must relate to factors affecting the party's *ability* to have filed the notice within the normal period allotted for that purpose. Thus, a respondent's reasons, however meritorious they might have been found if litigated in connection with a timely appeal, for believing that a suspension order originally subject to our review authority was invalid can not justify entertaining an appeal from an order of the Administrator that became final because no appeal to the

for concluding otherwise.

The law judge determined that the doctrine of collateral estoppel barred the respondent from his belated attempt to contest the suspension order in this revocation action.⁵ We think it sufficient to hold simply that the respondent forfeited his right to challenge the earlier order in this proceeding by failing to appeal it at the appropriate time, and through the appropriate procedures, some three years ago. In any event, the respondent has not demonstrated error in the law judge's grant of summary judgment for the Administrator on allegations whose facial correctness is not in dispute.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The decision of the law judge granting summary judgment on the amended emergency order of revocation is affirmed.

CARMODY, Acting Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

(..continued)
Board was taken.

⁵Ordinarily, collateral estoppel is applied to block a party from re-litigating issues that were, or could have been, resolved in a prior proceeding. Here, of course, there was no prior proceeding because respondent pursued no appeal.